83-1972

No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

THOMAS SCHULTE, MICHAEL LANG, FLOYD BOHLER, ROY SIMMONS and LINDA HINTON,
Petitioners,

vs.

HOMER E. SAYAD, CHARLES VALIER, THOMAS W. PURCELL, ROBERT F. WINTERSMITH and MAYOR VINCENT C. SCHOEMEHL, JR., comprising the Board of Police Commissioners, St. Louis, Missouri,
Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE MISSOURI COURT OF APPEALS, EASTERN DISTRICT

DANIS, REID, MURPHY, GARVIN, TOBBEN, SCHREIBER & MOHAN
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QUESTIONS PRESENTED

WHETHER THE BOARD OF POLICE COMMISSIONERS OF THE ST. LOUIS METROPOLITAN POLICE DEPARTMENT, AN ADMINISTRATIVE AGENCY WITHIN THE MEANING OF CHAPTER 536 R.S.Mo., MAY UTILIZE THE STATEMENTS OF PETITIONERS AS SUBSTANTIVE EVIDENCE DURING STATUTORILY MANDATED POLICE BOARD HEARINGS.

PARTIES

Petitioners, Thomas Schulte, Michael Lang, Floyd Bohler, Roy Simmons and Linda Hinton are former police officers with the St. Louis Metropolitan Police Department who were terminated by Homer E. Sayad, Charles Valier, Thomas W. Purcell, Robert F. Wintersmith and Mayor Vincent E. Schoemehl, Jr., who acted in their capacities as members of the Board of Police Commissioners, for allegedly violating certain of the rules and regulations of the St. Louis Metropolitan Police Department.

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

THOMAS SCHULTE, MICHAEL LANG, FLOYD BOHLER,
ROY SIMMONS and LINDA HINTON,
Petitioners,

vs.

HOMER E. SAYAD, CHARLES VALIER,
THOMAS W. PURCELL, ROBERT F. WINTERSMITH
and MAYOR VINCENT C. SCHOEMEHL, JR., comprising
the Board of Police Commissioners, St. Louis, Missouri,
Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE MISSOURI COURT OF APPEALS, EASTERN DISTRICT

Respondents, pray that this Court deny the petitioners' request for writ of certiorari.

OPINIONS BELOW

The Findings of Fact, Conclusions of Law, Decision and Order of the Board of Police Commissioners of the St. Louis Metropolitan Police Department is appended hereto as Appendix A. Appendix A to the petitioners' petition for writ of certiorari is not a true and accurate copy of the said findings of

fact. What was attached to the petition for writ of certiorari marked "Exhibit A" by the petitioners was the recommendation proposed by the hearing officer and not the final decision. Otherwise, the Appendix B through E, inclusive, filed by the petitioners are true and accurate.

JURISDICTION

Respondents do not dispute the jurisdictional statement filed by the petitioners.

CONSTITUTIONAL PROVISIONS

Respondents do not dispute that petitioners are raising claims with regard to their rights under the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution as well as other claims.

STATEMENT OF THE CASE

Respondents do not dispute the statement of the case as set forth by the petitioners other than as follows.

On page 4 of petitioners' brief, petitioners state:

> "Moreover, Captain Julian Boyd, Commander of Internal Affairs Division, testified that he told the officers that if they answered questions, they would not lose their jobs (Tr. 115)."

The review of the transcript in this matter does not support that statement on page 115 of the transcript. Captain Boyd did testify that during the examination by himself of the petitioners that he discussed his belief that the petitioners would not lose their jobs (Tr. 95).

REASONS FOR NOT ALLOWING THE BRIEF

Whether The Board Of Police Commissioners Of The St. Louis Metropolitan Police Department, An Administrative Agency, Within The Meaning Of Chapter 536 R.S.Mo., May Utilize The Statements Of Petitioners As Substantive Evidence During Statutorily Mandated Police Board Trials.

Petitioners have correctly noted that this Court has on several prior occassions reviewed and defined the rights and duties of police officers in connection with intradepartmental investigations and specifically, statements made by police officers in connection with those investigations to various agencies. *See Garrity v. New Jersey*, 385 U.S. 483 (1967); *Gardner v. Broderick*, 392 U.S. 273 (1968); *Spevak v. Klein*, 385 U.S. 511 (1967). In their petition, petitioners are asking this Court to hold that the Board of Police Commissioners cannot use statements which are lawfully obtained during the investigation of alleged wrong doing by the police department. This contention by petitioners is not well taken.

The Board of Police Commissioners acted well within the constitutional boundaries set forth by the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and the provisions of Chapter 536 R.S.Mo. Petitioners' basic premise is that these statements should be excluded based upon the same reasoning for excluding coerced statements in criminal cases. (Pr. Br. 10). Petitioners, however, failed to cite a single case, statute or other legal authority to support this conclusion. Petitioners buttress their unsupportable argument by invoking the wisdom of Gertrude Stein and maintain that these "coerced" statements are inherently unreliable. In connection with these statements being unreliable, petitioners have not shown any unreliability, either inherent or actual, in their statements. In deed, if there was any unreliability in a statement given by a police officer under orders, it would be in that officer's favor as he is the individual preparing for the statement. Furthermore, petitioners conveniently ignore that their present

counsel was with them the entire time during the time they were questioned (Tr. 87, 93, 178).

As to criminal proceedings being analogous to a board hearing, it is clear that a police officer is not under the same type of compulsion or coercion as is a criminal suspect. The basic difference between a criminal proceeding and any individual's, including a police officer's, right to employment with a particular employer is precisely the reason why petitioners' analogy must fail. Essentially, the difference is a question of liberty versus employment. In criminal cases, since one's liberty is at stake, respondents admit that citizens hold a constitutional privilege against compelled self-discrimination. Respondents would also concede that involuntary confessions are generally regarded as inadmissible against the criminally accused. In cases like the present, however, even where one's employment is at stake, there is no recognized right on the part of the employee to refuse to give a statement to one's employer regarding the employee's job related activities. The simple reason is that one's liberty is constitutionally protected by the Fifth Amendment to the United States Constitution whereas the right to be employed in a particular occupation is not. As stated by Justice Homes in the *McCuliffe v. New Bedford,* 115 Mass. 216, 29 N.E. 517, and quoted with approval in *Garrity v. State of New Jersey,* 385 U.S. 499, (1967):

> "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional right of free speech, as well as of idleness, by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered to him. On the same principal the City may impose any reasonable condition upon holding offices within its control." *McCuliffe v. New Bedford,* 155 Mass. at 220-29 N.E. at 517-518.

Indicative of this lack of constitutional protection given to one's right to employment with a particular employer is a fact that if Section 84.120 R.S.Mo. did not apply, these petitioners could have been terminated at any time for any reason or for no reason. *McNichols v. City of Wellston,* 613 S.W.2d 215 (Mo. App. 1981); *Johnson v. City of Buckner,* 610 S.W.2d 406 (Mo. App. 1980); *Karzin v. Collett,* 562 S.W.2d 397 (Mo. App. 1978). Because the petitioners were protected by Section 84.120 R.S.Mo., which requires cause for termination, petitioners were entitled to a "fair hearing" within the meaning of the doctrine of due process. In this respect, the petitioners, far from being denied their constitutional rights, were afforded more employment protection than the general population. This could hardly be deemed as an action which "drowned petitioners most basic fundamental rights to due process of law" (Pr. Br. 6). Thus, to maintain, as petitioners do, that the privilege against self-incrimination accorded suspects in criminal cases should be extended to employer-employee relationships would be to ignore the inherent differences as to what is at stake and the two contacts. Furthermore, under the petitioners' rational, statements which are lawfully obtained could and are lawfully used.

Cited as authority to support petitioners' position is the Pennsylvania case of *DiCiacco v. Civil Service Commission,* 389 A.2d 703 (Penn. 1978). Petitioners' reliance on this case is misplaced. In *DiCiacco,* the Court was reviewing a statement which was given by an officer pursuant to a section of the Philadelphia Home Charter which also compelled the officer to "waive immunity from prosecution on account of any matter about which he may be asked to testify." *DiCiacco v. Civil Service Commission,* 389 A.2d at 707. Relying upon the U.S. Supreme Court's decision in *Gardner v. Broderick,* 392 U.S. 273 (1968), the *DiCiacco* Court struck down the section in question since it involved an attempt to coerce a waiver of immunity. *DiCiacco v. Civil Service Commission,* 389 A.2d at 708. Thus, *DiCiacco* involved the waiver of Fifth Amendment protections with respect to *subsequent criminal* proceedings and is not and cannot be an authority for petitioners' present proposition.

Petitioners concede that a police officer can be ordered to report the performance of his official duties or face dismissal (Pr. Br. 6). The petitioners, however, would have this Court prohibit the use of such statements at the time of subsequent disciplinary hearings. if petitioners' position was correct, it would make the ability to obtain statements from an officer under investigation totally worthless, especially since the officer may be the only source of information as to his activities. The result would be similar to the police department lawfully obtaining a confession from a suspect, but being prohibited from using that confession at the time of trial. Therefore, petitioners' position is not meritorious of this Court's review.

CONCLUSION

For the foregoing reasons, petitioners' writ of certiorari should be denied.

Respectfully submitted,

DANIS, REID, MURPHY,
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Attorneys for Respondents

Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing was mailed first class, postage prepaid to: C. John Pleban, Attorney for Petitioners, 1600 Boatmen's Tower, 100 North Broadway, St. Louis, Missouri 63102, this 2nd day of July, 1984.

APPENDIX

APPENDIX A

BEFORE THE BOARD OF POLICE COMMISSIONERS OF
THE METROPOLITAN POLICE DEPARTMENT
CITY OF ST. LOUIS

File No: 80/446

In the Matter of: St. Louis Metropolitan Police Department,
Plaintiff,

vs.

Police Officer Thomas Schulte,
Defendant.

DECISION

This matter came up for hearing in the Board Room of the Police Headquarters Building on September 22, 1981 before MR. JOHN J. RILEY, Hearing Officer duly appointed by the Board of Police Commissioners, and COLONEL ROBERT F. WINTERSMITH, Member of the Board of Police Commissioners, upon charges and specifications previously filed against POLICE OFFICER THOMAS SCHULTE and said Officer's plea of not guilty to said charges and specifications.

Both parties received reasonable notice of the issues involved and the time and place for hearing. Both parties were permitted timely process for the production of witnesses and documents. Each party was represented by counsel. At the hearing hereof, both parties presented oral and documentary evidence. During the hearing of the matter herein, the Department dismissed Charge 5 and the specification thereto pending against OFFICER SCHULTE. At the conclusion of all of the evidence, the entire matter was taken under submission for consideration by Hearing Officer RILEY. Subsequently, the Hearing Officer submitted Suggested Findings of Fact and Recommended Con-

clusions of Law in connection with the four charges and specifications thereto pending against POLICE OFFICER SCHULTE to the Board. Thereafter, said Findings and Recommendation, the Charges and Specifications, and the full transcript, including all documentary evidence, of the proceedings were reviewed and duly considered by all of the Members of the Board of Police Commissioners. Upon due deliberation and consideration of the charges, the specifications thereto; the plea thereto and the proof adduced, the Board in reviewing the record as a whole, now makes its final decision, together with Findings of Fact, Conclusions of Law and its Order as set out herein below.

FINDINGS OF FACT

1. At all times mentioned in this matter, OFFICER THOMAS SCHULTE held a position of Police Officer with the St. Louis Metropolitan Police Department.

2. On August 19, 1980 POLICE OFFICER SCHULTE was assigned to the 6th Police District, his tour of duty consisting of the third or night watch.

3. On the date and time stated above, OFFICER SCHULTE was assigned to car #628.

4. Sometime prior to the commencement of his tour of duty (11:00 p.m. on August 19, 1980) OFFICER SCHULTE obtained a quantity of beer and placed it in an area commonly known as "the small arms compound".

5. At various times during his assigned tour of duty as described above, POLICE OFFICER SCHULTE consumed a portion of the beer he had obtained prior to reporting for duty. Said beer being consumed by the Officer in the area commonly known as "the small arms compound".

6. While on his tour of duty as described hereinabove, POLICE OFFICER SCHULTE, in the general vicinity of

Goodfellow and West Florissant Avenue in the City of St. Louis consumed some quantity of beer.

7. The area commonly known as "the small arms compound" is not within the geographic boundaries of OFFICER SCHULTE's assignment during his tour of duty on August 19/August 20, 1980.

8. On various occasions during his assigned watch on August 19/August 20, 1980, OFFICER THOMAS SCHULTE met and gathered with other police officers and non-Department personnel in the area commonly known as "the small arms compound".

9. SGT. WALTER CHENEY was POLICE OFFICER THOMAS SCHULTE's immediate supervisor during said Police Officer's tour of duty on August 19/August 20, 1980.

10. POLICE OFFICER THOMAS SCHULTE's duties on the above dates included picking up Department mail from Districts 6, 7, and 8, and delivering said mail to the Headquarters Building at 1200 Clark Avenue.

11. Sometime after 4:30 a.m. on August 20, 1980 POLICE OFFICER SCHULTE requested and instructed probationary POLICE OFFICER ROY SIMMONS to take POLICE OFFICER SCHULTE's vehicle and perform the mail duties assigned to him, OFFICER SCHULTE.

12. Probationary Officer SIMMONS performed said duties without instruction from any member of the Department other than OFFICER SCHULTE.

13. At no time did SGT. CHENEY give permission to OFFICER SCHULTE to assign his mail run duties to Probationary Officer SIMMONS.

14. Rule 7, Section 7.010(d) of the Police Manual published July, 1970 by the Board of Police Commissioners prohibits "conduct contrary to the good order and discipline of the Department".

15. Rule 9, Section 9.001(h) of the Police Manual published July, 1970 by the Board of Police Commissioners prohibits "drinking of alcoholic beverages of any kind while on duty".

16. Rule 3, Section 3.108(d) of the Police Manual published July, 1970 by the Board of Police Commissioners provides that on-duty officers "...shall constantly patrol his beat, except while on special assignment. He shall not lounge, loaf, or gather with others at any place".

CONCLUSIONS OF LAW

1. At all times mentioned in the Findings of Fact, the Defendant lawfully occupied the rank of Police Officer with the St. Louis Metropolitan Police Department and as a result thereof was within the lawful discipline of and government of the Department.

2. The Board of Police Commissioners of the City of St. Louis, Missouri, is possessed of the lawful power to make such rules and regulations consistent with law, for the government and discipline of the St. Louis Metropolitan Police Department.

3. Pursuant to this authority, the Board has promulgated and published rules of conduct in the Police Manual. Further, pursuant to that authority, the Board has promulgated and published in said Manual, Rule 7, setting forth complaint and disciplinary procedures and providing for the hearing of charges and specifications against members of the police force.

4. The hearing of the Charges and Specifications pending against POLICE OFFICER SCHULTE was lawfully conducted pursuant to and in accordance with said Rule 7 of the Police Manual, and in accordance with Chapter 536 of the Revised Statutes of the State of Missouri.

5. As a result of the Defendant's aforesaid status and the aforesaid powers of the Board, the Board is possessed of the right to apply its reasonable judgment and discretion to the

evidence adduced at the hearing of the matter herein and make Findings of Fact and enter a Judgment based thereon.

6. The Board has the right and power to affect the status of the Defendant by assessing termination on each of the charges.

7. The Board was authorized and empowered to issue timely notice of the hearing hereof, to conduct the hearing, and to take and hear any and all evidence by the parties and to utilize all competent and material evidence in rendering its decision.

8. The Board, as an administrative agency of the State Government, has the right to apply its reasonable judgment and discretion, based upon its experience in the government and administration of the Department, and the evidence adduced at the trial of the Defendant herein, in determining the proper disposition of the status of the Defendant.

9. The Defendant was and is guilty of Charges 1, 2, 3, and 4 of violating Rules 7, Section 7.010(d), Rule 9, Section 9.001(h), and Rule 3, Section 3.108(d) of the Police Manual, all as set out in Charges 1, 2, 3 and 4 and the Specifications thereto.

ORDER

The Findings of Fact and Conclusions of Law as set out hereinabove considered, the Board of Police Commissioners of the City of St. Louis, Missouri does hereby decide that the Defendant, POLICE OFFICER THOMAS SCHULTE is guilty of violation of Rule 7, Section 7.010(d) of the Police Manual as set out in Charge 1 and its Specification and is hereby terminated from the Department for said violation; that said Officer is guilty of violation of Rule 9, Section 9.001(h) of the Police Manual as set out in Charge 2 and Specification 1 and 2 of said Charge and is hereby terminated from the Department for said violation; that said Officer is guilty of violation of Rule 3, Section 3.108(d) of the Police Manual as set out in Charge 3 and its Specification and is hereby terminated from the Depart-

ment for said violation; that said Officer is guilty of violation of Rule 7, Section 7.010(d) of the Police Manual as set out in Charge 4 of and its Specification and is hereby terminated from the Department for said violation.

This Order shall be effective upon the filing hereof, this ____ day of _____, 1982.

BOARD OF POLICE COMMISSIONERS
OF THE CITY OF ST. LOUIS, MISSOURI

By:_____

By:_____

By:_____

By:_____

ATTEST:

_____
Secretary to the Board

APPENDIX B

BEFORE THE BOARD OF POLICE COMMISSIONERS OF
THE METROPOLITAN POLICE DEPARTMENT
CITY OF ST. LOUIS

File No: 80/446

In the Matter of:
St. Louis Metropolitan Police Department,
Plaintiff,

vs.

Police Officer Michael Lang,
Defendant.

DECISION

This matter came up for hearing in the Board Room of the Police Headquarters Building on September 22, 1981 before MR. JOHN J. RILEY, Hearing Officer duly appointed by the Board of Police Commissioners, and COLONEL ROBERT F. WINTERSMITH, Member of the Board of Police Commissioners, upon charges and specifications previously filed against POLICE OFFICER MICHAEL LANG and said Officer's plea of not guilty to said charges and specifications.

Both parties received reasonable notice of the issues involved and the time and place for hearing. Both parties were permitted timely process for the production of witnesses and documents. Each party was represented by counsel. At the hearing hereof, both parties presented oral and documentary evidence. During the hearing of the matter herein, the Department dismissed Charge 4 and the specifications thereto pending against OFFICER LANG. At the conclusion of all of the evidence, the entire matter was taken under submission for consideration by Hearing Officer RILEY. Subsequently, the Hearing Officer

submitted Suggested Findings of Fact and Recommended Conclusions of Law in connection with the three charges and specifications thereto pending against POLICE OFFICER LANG to the Board. Thereafter, said Findings and Recommendation, the Charges and Specifications, and the full transcript, including all documentary evidence, of the proceedings were reviewed and duly considered by all of the Members of the Board of Police Commissioners. Upon due deliberation and consideration of the charges, the specifications thereto; the plea thereto and the proof adduced, the Board in reviewing the record as a whole, now makes its final decision, together with Findings of Fact, Conclusions of Law and its Order as set out herein below.

FINDINGS OF FACT

1. At all times mentioned in this matter, OFFICER MICHAEL LANG held a position of Police Officer with the St. Louis Metropolitan Police Department.

2. On August 19, 1980/August 20, 1980, POLICE OFFICER MICHAEL LANG was assigned to the 6th Police District, his tour of duty at that time being the night watch from approximately 11:00 p.m. on August 19, 1980 to 7:00 a.m. on August 20, 1980.

3. That sometime, after 2:00 a.m. on August 20, 1980 and prior to 6:00 a.m. on August 20, 1980, OFFICER MICHAEL LANG consumed a quantity of beer in an area commonly known as "the small arms compound".

4. While on duty as described hereinabove, on August 20, 1980, sometime between 1:00 a.m. and 1:30 a.m. on August 20, 1980 POLICE OFFICER MICHAEL LANG consumed a quantity of beer in the general vicinity of Goodfellow and West Florissant Avenue in the City of St. Louis.

5. The area commonly known as "the small arms compound", located in the City of St. Louis, Missouri, was not

within the geographical boundaries of that area assigned to POLICE OFFICER MICHAEL LANG while on his tour of duty from August 19, 1980 to August 20, 1980.

6. Sometime during the early morning hours of August 20, 1980 POLICE OFFICER MICHAEL LANG met and congregated with other police officers and persons not members of the Metropolitan Police Department in the area commonly known as "the small arms compound".

7. POLICE OFFICER MICHAEL LANG was assigned to Area #631 in the 6th Police District of the City of St. Louis on the dates stated hereinabove; said assignment consisting of the area bounded by West Florissant Blvd. to Bircher Blvd.; Wren Street to the City Limits, City of St. Louis.

8. Rule 9, Section 9.001(h) of the Police Manual, published July, 1970 by the Board of Police Commissioners prohibits "drinking of alcoholic beverages of any kind while on duty".

9. Rule 3, Section 3.108(d) of the Police Manual, published July, 1970 by the Board of Police Commissioners provides in applicable part that an on-duty officer "....shall consistently patrol his beat, except when on special assignment. He shall not lounge, loaf, or gather with others at any place".

10. Rule 3, Section 3.108(b) of the Police Manual, published July, 1970, by the Board of Police Commissioners provides in applicable part, that an on-duty officer "...shall confine his patrol within the limits of his beat, except in the arrest of a prisoner or other necessary absence, until the time fixed for the expiration of his tour of duty and he is properly relieved."

CONCLUSIONS OF LAW

1. At all times mentioned in the Findings of Fact, the Defendant lawfully occupied the rank of Police Officer with the St. Louis Metropolitan Police Department and as a result thereof was within the lawful discipline of and government of the Department.

2. The Board of Police Commissioners of the City of St. Louis, Missouri, is possessed of the lawful power to make such rules and regulations consistent with the law, for the government and discipline of the St. Louis Metropolitan Police Department.

3. Pursuant to this authority, the Board has promulgated and published rules of conduct in the Police Manual. Further, pursuant to that authority, the Board has promulgated and published in said Manual, Rule 7, setting forth complaint and disciplinary procedures and providing for the hearing of charges and specifications against members of the police force.

4. The hearing of the Charges and Specifications pending against POLICE OFFICER MICHAEL LANG was lawfully conducted pursuant to and in accordance with said Rule 7 of the Police Manual, and in accordance with Chapter 536 of the Revised Statutes of the State of Missouri.

5. As a result of the Defendant's aforesaid status and the aforesaid powers of the Board, the Board is possessed of the right to apply its reasonable judgment and discretion to the evidence adduced at the hearing of the matter herein and make Findings of Fact and enter a Judgment based thereon.

6. The Board has the right and power to affect the status of the Defendant by assessing termination on each of the charges.

7. The Board was authorized and empowered to issue timely notice of the hearing hereof, to conduct the hearing, and to take and hear any and all evidence by the parties and to utilize all competent and material evidence in rendering its decision.

8. The Board, as an administrative agency of the State Government, has the right to apply its reasonable judgment and discretion, based upon its experience in the government and administration of the Department, and the evidence adduced at the trial of the Defendant herein, in determining the proper disposition of the status of the Defendant.

9. The Defendant was and is guilty of Charge 1, 2, and 3 of violating Rule 9, Section 9.001(h), Rule 3, Section 3.108(d) and Rule 3, Section 108(b) of the Police Manual, all as set out in Charges 1, 2, and 3 and the Specifications thereto.

ORDER

The Findings of Fact and Conclusions of Law as set out hereinabove considered, the Board of Police Commissioners of the City of St. Louis, Missouri, does hereby decide that the Defendant, POLICE OFFICER MICHAEL LANG, is guilty of violation of Rule 9, Section 9.001(h) of the Police Manual as set out in Charge 1 and Specifications 1 and 2 and is hereby terminated from the Department for said violation; that said Police Officer is guilty of violation of Rule 3, Section 3.108(d) of the Police Manual as set out in Charge 2 and Specification 1 of said Charge and is hereby terminated from the Department for said violation; that said Officer is guilty of violation of Rule 3, Section 3.108(b) of the Police Manual as set out in Charge 3 and its Specification and is hereby terminated from the Department for said violation.

This Order shall be effective upon the filing hereof, this _____ day of _____, 1982.

BOARD OF POLICE COMMISSIONERS
OF THE CITY OF ST. LOUIS, MISSOURI

By:_____

By:_____

By:_____

By:_____

ATTEST:

_____
Secretary to the Board

APPENDIX C

BEFORE THE BOARD OF POLICE COMMISSIONERS OF
THE METROPOLITAN POLICE DEPARTMENT
CITY OF ST. LOUIS

File No. 80/446

In the Matter of:
St. Louis Metropolitan Police Department,
Plaintiff,
vs.
Police Officer Floyd Bohler,
Defendant.

DECISION

This matter came up for hearing in the Board Room of the Police Headquarters Building on September 22, 1981 before MR. JOHN J. RILEY, Hearing Officer duly appointed by the Board of Police Commissioners, and COLONEL ROBERT F. WINTERSMITH, Member of the Board of Police Commissioners, upon charges and specifications previously filed against POLICE OFFICER FLOYD BOHLER and said Officer's plea of not guilty to said charges and specifications.

Both parties received reasonable notice of the issues involved and the time and place for hearing. Both parties were permitted timely process for the production of witnesses and documents. Each party was represented by counsel. At the hearing hereof, both parties presented oral and documentary evidence. At the conclusion of all of the evidence, the entire matter was taken under submission for consideration by Hearing Officer RILEY. Subsequently, the Hearing Officer submitted Suggested Findings of Fact and Recommended Conclusions of Law in connection with the four charges and specifications thereto pending

against POLICE OFFICER BOHLER to the Board. Thereafter, said Findings and Recommendation, the Charges and Specifications, and the full transcript, including all documentary evidence, of the proceeding were reviewed and duly considered by all of the Members of the Board of Police Commissioners. Upon due deliberation and condsideration of the charges, the specifications thereto; the plea thereto and the proof adduced, the Board in reviewing the record as a whole, now makes its final decision, together with the Findings of Fact, Conclusions of Law and its Order as set out herein below.

FINDINGS OF FACT

1. At all times mentioned in this matter, OFFICER FLOYD BOHLER held a position of Police Officer with the St. Louis Metropolitan Police Department.

2. On August 19/August 20, 1980, POLICE OFFICER FLOYD BOHLER was assigned to the 6th Police District in the City of St. Louis, his tour of duty commencing at 11:00 p.m. on August 19, 1980 and terminating at 7:00 a.m. on August 20, 1980.

3. POLICE OFFICER BOHLER's assigned beat on the above dates at the above time was beat #629 within the said 6th Police District of the City of St. Louis, which beat consists of the area bounded by Bircher Blvd., and West Florissant Blvd.; Kingshighway and Emerson Streets in the City of St. Louis.

4. At all times herein described, LINDA HINTON was a probationary Police Officer with the St. Louis Metropolitan Police Department.

5. On the date and at the time described hereinabove, POLICE OFFICER BOHLER was assigned as Probationary Police Officer HINTON's Training Officer.

6. At some time between 2:00 a.m. and 6:00 a.m. on August 20, 1980, POLICE OFFICE BOHLER consumed a quantity of

beer in the area generally known as "the small arms compound".

7. At some time between 2:00 a.m. and 6:00 a.m. on August 20, 1980, POLICE OFFICER BOHLER met with and gathered with other members of the Metropolitan Police Department and persons who were not members of the Department in the area known as "the small arms compound".

8. At some time on August 20, 1980, during his tour of duty, POLICE OFFICER FLOYD BOHLER was absent from his assigned beat without permission, justification or excuse.

9. At some time of the early morning hours of August 20, 1980 POLICE OFFICER BOHLER drove his police vehicle with Probationary Officer HINTON, as passenger, out of his assigned area, to the area commonly known as "the small arms compound" and engaged in the activities outlined hereinabove.

10. Rule 9, Section 9.001(h) of the Police Manual, published July, 1970 by the Board of Police Commissioners prohibits "drinking of alcoholic beverages of any kind while on duty".

11. Rule 3, Section 3.108(d) of the Police Manual, published July, 1970 by the Board of Police Commissioners, provides in applicable part, that an on-duty officer: "...shall consistently patrol his beat, except when on special assignment. He shall not lounge, loaf, or gather with others at any place".

12. Rule 3, Section 3.108(b) of the Police Manual, published July, 1970 by the Board of Police Commissioners provides in applicable part, that an on-duty officer: "...shall confine his patrol within the limits of his beat, except in the arrest of a prisoner or other necessary absence, until the time fixed for the expiration of his tour of duty and he is properly relieved."

13. Rule 9, Section 9.001(r) of the Police Manual, published July, 1970 by the Board of Police Commissioners, in applicable part prohibits "improper performance of duty".

CONCLUSIONS OF LAW

1. At all times mentioned in the Findings of Fact, the Defendant lawfully occupied the rank of Police Officer with the St. Louis Metropolitan Police Department and as a result thereof was within the lawful discipline of and government of the Department.

2. The Board of Police Commissioners of the City of St. Louis, Missouri, is possessed of the lawful power to make such rules and regulations consistent with law, for the government and discipline of the St. Louis Metropolitan Police Department.

3. Pursuant to this authority, the Board has promulgated and published rules of conduct in the Police Manual. Further, pursuant to that authority, the Board has promulgated and published in said Manual, Rule 7, setting forth complaint and disciplinary procedures and providing for the hearing of charges and specifications against members of the police force.

4. The hearing of the Charges and Specifications pending against POLICE OFFICER FLOYD BOHLER was lawfully conducted pursuant to and in accordance with said Rule 7 of the Police Manual, and in accordance with Chapter 536 of the Revised Statutes of the State of Missouri.

5. As a result of the Defendant's aforesaid status and the aforesaid powers of the Board, the Board is possessed of the right to apply its reasonable judgment and discretion to the evidence adduced at the hearing of the matter herein and make Findings of Fact and enter a Judgment based thereon.

6. The Board has the right and power to affect status of the Defendant by assessing termination on each of the charges.

7. The Board was authorized and empowered to issue timely notice of the hearing hereof, to conduct the hearing, and to take and hear any and all evidence by the parties and to utilize all competent and material evidence in rendering its decision.

8. The Board, as an administrative agency of the State Government, has the right to apply its reasonable judgment and discretion, based upon its experience in the government and administration of the Department, and the evidence adduced at the trial of the Defendant herein, in determining the proper disposition of the status of the Defendant.

9. The Defendant, POLICE OFFICER FLOYD BOHLER, was and is guilty of Charges 1, 2, 3 and 4 of violating Rule 9, Section 9.001(h); Rule 3, Section 3.108(d); Rule 3, Section 3.108(b); and Rule 9, Section 9.001(r) of the Police Manual, allas set out in Charges 1, 2, 3, and 4 and the Specifications thereto.

ORDER

The Findings of Fact and Conclusions of Law as set out hereinabove considered, the Board of Police Commissioners of the City of St. Louis, Missouri, does hereby decide that the Defendant, POLICE OFFICER FLOYD BOHLER, is guilty of violation of Rule 9, Section 9.001(h) of the Police Manual as set out in Charge 1 and its Specification and is hereby terminated from the Department for said violation; that said Officer is guilty of violation of Rule 3, Section 3.108(d) of the Police Manual as set out in Charge 2 and its Specification of said Charge and is hereby terminated from the Department for said violation; that said Police Officer is guilty of violation of Rule 3, Section 3.108(b) of the Police Manual as set out in Charge 3 and its Specification and is hereby terminated from the Department for said violation; that said Officer is guilty of violation of Rule 9, Section 9.001(r) of the Police Manual as set out in Charge 4 and its Specification and is hereby terminated from the Department for said violation.

This Order shall be effective upon the filing hereof, this _____ day of _____, 1982.

BOARD OF POLICE COMMISSIONERS
OF THE CITY OF ST. LOUIS, MISSOURI

By:_____

By:_____

By:_____

By:_____

ATTEST:

_____

APPENDIX D

BEFORE THE BOARD OF POLICE COMMISSIONERS OF
THE METROPOLITAN POLICE DEPARTMENT
CITY OF ST. LOUIS

File No: 80/446

In the Matter of:
St. Louis Metropolitan Police Department,
Plaintiff,

vs.

Probationary Police Officer Linda Hinton,
Defendant.

DECISION

This matter came up for hearing in the Board Room of the Police Headquarters Building on September 22, 1981 before MR. JOHN J. RILEY, Hearing Officer, duly appointed by the Board of Police Commissioners, and COLONEL ROBERT F. WINTERSMITH, Member of the Board of Police Commissioners, upon charges and specifications previously filed against Probationary Police Officer LINDA HINTON and said Officer's plea of not guilty to said charges and specifications.

Both parties received reasonable notice of the issues involved and the time and place for hearing. Both parties were permitted timely process for the production of witnesses and documents. Each party was represented by counsel. At the hearing hereof, both parties presented oral and documentary evidence. At the conclusion of all of the evidence, the entire matter was taken under submission for consideration by Hearing Officer RILEY. Subsequently, the Hearing Officer submitted Suggested Findings of Fact and Recommended Conclusions of Law in connection with the three charges and specifications thereto pen-

ding against Probationary Officer, LINDA HINTON to the Board. Thereafter, said Findings and Recommendations, the Charges and Specifications, and the full transcript, including all documentary evidence, of the proceedings were reviewed and duly considered by all of the Members of the Board of Police Commissioners. Upon due deliberation and consideration of the charges, the specifications thereto; the plea thereto and the proof adduced, the Board in reviewing the record as a whole, now makes its final decision, together with Findings of Fact, Conclusions of Law and its Order as set out herein below.

FINDINGS OF FACT

1. At all times mentioned in this matter, Probationary Officer LINDA HINTON held the position of Probationary Police Officer with the St. Louis Metropolitan Police Department.

2. On August 19/August 20, 1980, Probationary Officer LINDA HINTON was assigned to the 6th Police District in the City of St. Louis.

3. On the above dates, her tour of duty was from 11:00 p.m. August 19, 1980 to 7:00 a.m. August 20, 1980; during that time she was assigned to beat #629 consisting of the area bounded by Bircher Blvd., and West Florissant Blvd. Kingshighway and Emerson Avenue in the City of St. Louis.

4. The area commonly known as "the small arms compound" in the City of St. Louis is not within the geographic boundaries described as beat #629, to which Probationary Officer HINTON was assigned on the date stated hereinabove.

5. At some time between 2:00 a.m. and 6:00 a.m. on August 20, 1980, Probationary Officer LINDA HINTON consumed a quantity of beer at the location commonly known as "the small arms compound" in the City of St. Louis.

6. At a certain time between 2:00 a.m. and 6:00 a.m. on August 20, 1980, Probationary Officer LINDA HINTON met

and gathered with other personnel of the Metropolitan Police Department and individuals not members of the Department in the area commonly known as "the small arms compound".

7. In the early morning hours of August 20, 1980, Probationary Police Officer HINTON left her assigned beat area without permission, excuse, cause or justification.

8. Rule 9, Section 9.001(h) of the Police Manual, published July, 1970, by the Board of Police Commissioners, prohibits in applicable part "drinking of alcoholic beverages of any kind while on duty".

9. Rule 3, Section 3.108(d) of the Police Manual, published July, 1970 by the Board of Police Commissioners, provides in applicable part that an on-duty officer: "...shall consistently patrol his beat, except when on special assignment. He shall not lounge, loaf, or gather with others at any place".

10. Rule 3, Section 3.108(b) of the Police Manual, published July, 1970, by the Board of Police Commissioners provides in applicable part, that an on-duty officer: "....shall confine his patrol within the limits of his beat, except in the arrest of a prisoner or other necessary absence, until the time fixed for the expiration of his tour of duty and he is properly relieved."

CONCLUSIONS OF LAW

1. At all times mentioned in the Findings of Fact, the Defendant lawfully occupied the rank of Probationary Officer with the St. Louis Metropolitan Police Department and as a result thereof was within the lawful discipline of and government of the Department.

2. The Board of Police Commissioners of the City of St. Louis, Missouri, is possessed of the lawful power to make such rules and regulations consistent with the law, for the government and discipline of the St. Louis Metropolitan Police Department.

3. Pursuant to this authority, the Board has promulgated and published rules of conduct in the Police Manual. Further, pursuant to that authority, the Board has promulgated and published in said Manual, Rule 7, setting forth complaint and disciplinary procedures and providing for the hearing of charges and specifications against members of the police force.

4. The hearing of the Charges and Specifications pending against Probationary Police Officer LINDA HINTON was lawfully conducted pursuant to and in accordance with said Rule 7 of the Police Manual, and in accordance with Chapter 536 of the Revised Statutes of the State of Missouri.

5. As a result of the Defendant's aforesaid status and the aforesaid powers of the Board, the Board is possessed of the right to apply its reasonable judgment and discretion to the evidence adduced at the hearing of the matter herein and make Findings of Fact and enter a Judgment based thereon.

6. The Board has the right and power to affect the status of the Defendant by assessing termination on each of the charges.

7. The Board was authorized and empowered to issue timely notice of the hearing hereof, to conduct the hearing, and to take and hear any and all evidence by the parties and to utilize all competent and material evidence in rendering its decision.

8. The Board, as an administrative agency of the State Government, has the right to apply its reasonable judgment and discretion, based upon its experience in the government and administration of the Department, and the evidence adduced at the trial of the Defendant herein, in determining the proper disposition of the status of the Defendant.

9. The Defendant, Probationary Police Officer, LINDA HINTON, was and is guilty of Charges 1, 2 and 3 of violating Rule 9, Section 9.001(h), Rule 3, Section 3.108(d) and Rule 3, Section 3.108(b) of the Police Manual, all as set out in Charges 1, 2 and 3, and the Specifications thereto.

ORDER

The Findings of Fact and Conclusions of Law as set out hereinabove considered, the Board of Police Commissioners of the City of St. Louis, Missouri, does hereby decide that the Defendant, Probationary Police Officer, LINDA HINTON, is guilty of violation of Rule 9, Section 9.001(h) of the Police Manual as set out in Charge 1 and its Specifications and is hereby terminated from the Department for said violation; that said Probationary Officer is guilty of violation of Rule 3, Section 3.108(d) of the Police Manual as set out in Charge 2 and its Specification of said Charge and is hereby terminated from the Department for said violation; that said Probationary Officer is guilty of violation of Rule 3, Section 3.108(b) of the Police Manual as set out in Charge 3 and its Specifications and is hereby terminated from the Department for said violation.

This Order shall be effective upon the filing hereof this _____ day of _____ 1982.

BOARD OF POLICE COMMISSIONERS
OF THE CITY OF ST. LOUIS, MISSOURI

By:_____

By:_____

By:_____

By:_____

ATTEST:

_____
Secretary to the Board

APPENDIX E

BEFORE THE BOARD OF POLICE COMMISSIONERS OF
THE METROPOLITAN POLICE DEPARTMENT
CITY OF ST. LOUIS

File No: 80/446

In the Matter of:
St. Louis Metropolitan Police Department,
Plaintiff,

vs.

Probationary Police Officer Roy Simmons,
Defendant.

DECISION

This matter came up for hearing in the Board Room of the Police Headquarters Building on September 22, 1981 before MR. JOHN J. RILEY, Hearing Officer duly appointed by the Board of Police Commissioners, and COLONEL ROBERT F. WINTERSMITH, Member of the Board of Police Commissioners, upon charges and specifications previously filed against Probationary POLICE OFFICER ROY SIMMONS and said Officer's plea of not guilty to said charges and specifications.

Both parties received reasonable notice of the issues involved and the time and place for hearing. Both parties were permitted timely process for the production of witnesses and documents. Each party was represented by counsel. At the hearing hereof, both parties presented oral and documentary evidence. During the hearing of the matter herein, the Department dismissed Charge 5 and the specifications thereto pending against Probationary Police Officer ROY SIMMONS. At the conclusion of all of the evidence, the entire matter was taken under submission for consideration by Hearing Officer RILEY. Subsequent-

ly, the Hearing Officer submitted Suggested Findings of Fact and Recommended Conclusions of Law in connection with the four charges and specifications thereto pending against Probationary Officer ROY SIMMONS to the Board. Thereafter, said Findings and Recommendation, the Charges and Specifications, and the full transcript, including al documentary evidence, of the proceedings were reviewed and duly considered by all of the Members of the Board of Police Commissioners. Upon due deliberation and consideration of the charges, the specifications thereto; the plea thereto and the proof adduced, the Board in reviewing the record as a whole, now makes its final decision, together with Findings of Fact, Conclusions of Law and its Order as set out herein below.

FINDINGS OF FACT

1. At all times mentioned in this matter, Probationary Officer ROY SIMMONS held a position of Probationary Police Officer with the St. Louis Metropolitan Police Department.

2. On August 19/August 20, 1980, between the hours of 11:00 p.m. on August 19, 1980 and 7:00 a.m. on August 20, 1980, Probationary Officer SIMMONS was assigned to the 6th Police District in the City of St. Louis.

3. On the above date, at the above stated times, Probationary Police Officer SIMMONS' beat number was 631, which consists of the area bounded by West Florissant Blvd. to Bircher; Wren to the City Limits of the City of St. Louis.

4. The area within the City of St. Louis commonly known as "the small arms compound" is not within the geographic boundaries of the above-described beat.

5. That sometime between 2:00 a.m. and 6:00 a.m. on August 20, 1980, Probationary Officer SIMMONS consumed a quantity of beer in the area commonly known as "the small arms compound".

6. That sometime between 1:00 a.m. and 1:30 a.m. Probationary Officer SIMMONS consumed a quantity of beer at or near the intersection of Goodfellow and West Florissant Avenue in the City of St. Louis.

7. At sometime in the early morning hours of August 20, 1980, Probationary Officer SIMMONS left his assigned beat area and gathered with and met with other members of the Police Department in the area commonly known as "the small arms compound" of the City of St. Louis.

8. At sometime during the morning hours of August 20, 1980, Probationary Officer SIMMONS left his assigned patrol area without permission, excuse or justification and met with other officers of the Department and non-Department personnel in the area known as "the small arms compound" in the City of St. Louis.

9. Sometime in the early morning hours of August 20, 1980, Probationary Officer SIMMONS operated a vehicle assigned to Police Officer THOMAS SCHULTE in picking up Department mail at several District stations and delivering said mail to the Headquarters Building.

10. The assignment to pick up and deliver mail had been given to Police Officer SCHULTE.

11. The above-described change in duty assignment took place without the knowledge or permission of the supervisor of the two officers named herein.

12. Rule 9, Section 9.001(h) of the Police Manual, published July, 1970 by the Board of Police Commissioners prohibits "drinking of alcoholic beverages of any kind while on duty".

13. Rule 3, Section 3.108(d) of the Police Manual, published July, 1970 by the Board of Police Commissioners provides in applicable part that an on-duty officer "....shall consistently patrol his beat, except when on special assignment. He shall not lounge, loaf, or gather with others at any place".

14. Rule 3, Section 3.108(b) of the Police Manual, published July, 1970 by the Board of Police Commissioners, provides in applicable part, that an on-duty officer "....shall confine his patrol within the limits of his beat, except in the arrest of a prisoner or other necessary absence, until the time fixed for the expiration of his tour of duty and he is properly relieved".

15. Rule 7, Section 7.010(d) of the Police Manual, published July, 1970 by the Board of Police Commissioners, in applicable part prohibits any "conduct contrary to the good order and discipline of the Department".

CONCLUSIONS OF LAW

1. At all times mentioned in the Findings of Fact, the Defendant lawfully occupied the rank of Probationary Police Officer with the St. Louis Metropolitan Police Department and as a result thereof was within the lawful discipline of and government of the Department.

2. The Board of Police Commissioners of the City of St. Louis, Missouri, is possessed of the lawful power to make such rules and regulations consistent with law, for the government and discipline of the St. Louis Metropolitan Police Department.

3. Pursuant to this authority, the Board has promulgated and published rules of conduct in the Police Manual. Further, pursuant, pursuant to that authority, the Board has promulgated and published in said Manual, Rule 7, setting forth complaint and disciplinary procedures and providing for the hearing of charges and specifications against members of the police force.

4. The hearing of the Charges and Specifications pending against Probationary Police Officer ROY SIMMONS was lawfully conducted pursuant to and in accordance with said Rule 7 of the Police Manual, and in accordance with Chapter 536 of the Revised Statutes of the State of Missouri.

5. As a result of the Defendant's aforesaid status and the aforesaid powers of the Board, the Board is possessed of the right to apply its reasonable judgment and discretion to the evidence adduced at the hearing of the matter herein and make Findings of Fact and enter a Judgment based thereon.

6. The Board has the right and power to affect the status of the Defendant by assessing termination on each of the charges.

7. The Board was authorized and empowered to issue timely notice of the hearing hereof, to conduct the hearing, and to take and hear any and all evidence by the parties and to utilize all competent and material evidence in rendering its decision.

8. The Board, as an administrative agency of the State Government, has the right to apply its reasonable judgment and discretion, bsaed upon its experience in the government and administration of the Department, and the evidence adduced at the trial of the Defendant herein, in determining the proper disposition of the status of the Defendant.

9. The Defendant, Probationary Officer ROY SIMMONS was and is guilty of Charges 1, 2, 3 and 4 of violating Rule 9, Section 9.001(h), Rule 3, Section 3.108(d), Rule 3, Section 3.108(b) and Rule 7, Section 7.010(d) of the Police Manual as set out in Charges 1, 2, 3 and 4 and the Specifications thereto.

ORDER

The Findings of Fact and Conclusions of Law as set out hereinabove considered, the Board of Police Commissioners of the City of St. Louis, Missouri, does hereby decide that the Defendant Probationary Police Officer ROY SIMMONS, is guilty of violation of Rule 9, Section 9.001(h) of the Police Manual as set out in Charge 1 and its Specifications and is hereby terminated from the Department for said violation; that said Probationary Police Officer is guilty of violation of Rule 3, Section 3.108(d) of the Police Manual as set out in Charge 2 and

its Specification of said Charge and is hereby terminated from the Department for said violation; that said Probationary Police Officer is guilty of violation of Rule 3, Section 3.108(b) of the Police Manual as set out in Charge 3 and its Specification and is hereby terminated from the Department for said violation; that said Probationary Police Officer is guilty of violation of Rule 7, Section 7.010(d) of the Police Manual as set out in Charge 4 and its Specification and is hereby terminated from the Department for said violation.

This Order shall be effective upon the filing hereof this _____ day of _____, 1982.

BOARD OF POLICE COMMISSIONERS
OF THE CITY OF ST. LOUIS, MISSOURI

By:_____

By:_____

By:_____

By:_____

ATTEST:

_____
Secretary to the Board